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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,897	09/07/2006	Tobias Lang	3804	6440

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EXAMINER	
WEST, JEFFREY R	

ART UNIT	PAPER NUMBER
2857	

MAIL DATE	DELIVERY MODE
04/29/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/591,897	**Applicant(s)** LANG, TOBIAS	
	Examiner JEFFREY R. WEST	**Art Unit** 2857	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 April 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *3* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1,2 and 4-8*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Jeffrey R. West/
Primary Examiner, Art Unit 2857

Continuation of 11:
Applicant argues:
The U.S. patent to Bolstrom discloses a method of indicating a time of an acoustic pulse and a device for carrying out the method. The patent to Bolstrom deals with measurements of a volume of a tank fluid by means of ultrasound. It relates to a totally different technical field and is not combinable with Applicant Admitted Prior Art as a matter of obviousness.
…
It is respectfully submitted that the references did not disclose any hint or suggestion for their combination, and it can not be considered as obvious to combine them.
…
Definitely, there are no teachings or suggestion in the references to combine them to arrive at the new features of the present invention which provided proposed by the applicant and combined in the inventor manner.
…
Definitely, the combination of the references applied by the Examiner can not be considered as obvious.
It is further respectfully stated that the present invention can not be derived from the combination of the references, since any combination would not lead to the applicant's invention. Instead, the references have to be modified, in particular by including into them the new features of the present invention which were first proposed by the applicants and now defined in amended claims 1 and 7.

The Examiner asserts that Applicant appears to be arguing that Bolstrom is nonanalgous art, the obviousness is based upon improper hindsight reasoning, and there is no suggestion to combine the references.

In response the Examiner first asserts that Bolstrom is considered to be in the field of Applicant's endeavor as Applicant's invention is for determination of reception time of an ultrasonic signal by means of pulse shape detection and Bolstrom is for a method of indicating the time of an acoustic pulse and a device for carrying out the method wherein the acoustic measurement system may be used in ultrasound examination.

The Examiner also asserts that the Examiner's conclusion of obviousness takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure as specific motivation has been provided for each combination using motivation known to one having ordinary skill in the art as well as provided by the references themselves. See In re McLaughlin, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

The Examiner also asserts that obviousness has been established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, specifically:

It would have been obvious to one having ordinary skill in the art to modify the invention of AAPA to explicitly include correcting the reception time based on a time shift between the reception and time of the characteristic value, as taught by Eshita, because, as suggested by Eshita, the combination would have improved the system of AAPA by providing means for accounting for time drifting caused by ambient noise thereby increasing the resulting measurement accuracy (0007, lines 1-10).

It would have been obvious to one having ordinary skill in the art to modify the invention of AAPA and Eshita to specifically describe determining a chronological position of a focal point of an envelope curve as the characteristic value, as taught by Bolstrom, because the invention of AAPA and Eshita does teach determining a maximum amplitude of the ultrasonic signal and Bolstrom suggests a method for determining a characteristic value dependent on signal peaks (column 4, lines 27- 37) that would have improved the system of AAPA and Eshita by detecting a characteristic value that is not skewed by attenuation thereby providing increased accuracy in time determination (column 2, line 65 to column 3, line 3 and column 3, lines 45-60).
See In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

/JRW/